U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-D-S-, LLC

DATE: JUNE 2, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an information technology support and services company, seeks to employ the Beneficiary permanently in the United States as a chief financial officer. It requests classification of the Beneficiary as a member of the professions holding an advanced degree or an individual of exceptional ability in business under the second preference immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent residence. It also makes immigrant visas available to individuals with a degree of expertise significantly above that normally encountered in the sciences, arts, or business.

The Director, Nebraska Service Center, denied the petition. The Director found that the Beneficiary does not qualify for the classification of advanced degree professional because he does not have a foreign equivalent degree to a U.S. advanced degree. The Director also found that the Beneficiary does not qualify for the job offered under the terms of the labor certification. The Director did not consider whether the Beneficiary possessed exceptional ability in the sciences, arts, or business.

The matter is now before us on appeal. The Petitioner submits a brief and asserts that the Beneficiary has the requisite foreign equivalent degree to a U.S. baccalaureate degree which, together with his extensive experience, is sufficient to qualify the Beneficiary for classification as an advanced degree professional and meets the terms of the labor certification. The Petitioner also asserts that the Director erred in refusing to adjudicate the petition under the alternative exceptional ability category within the second preference employment-based classification. Upon *de novo* review, we will dismiss the appeal.

I. CASE HISTORY

The instant petition, Form I-140, was filed on June 10, 2015. As required by statute, the petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification, which was filed with the U.S. Department of Labor (DOL) on June 30, 2014, and certified by the DOL (labor certification) on March 31, 2015. In Section H of the ETA Form 9089 the Petitioner set forth the following pertinent requirements for the proffered position of chief financial officer:

4.	Education: Minimum level required:	Bachelor's degree
4-B.	Major Field of Study:	Business, Accounting, or related
6.	Is experience in the job offered required?	Yes
6-A.	How long?	60 months
7.	Is there an alternate field of study that is acceptable?	No
8.	Is an alternate combination of education and experience acceptable?	Yes
8-A.	Alternate level of education required:	Master's degree
8-C.	Number of years experience acceptable:	24 months
9.	Is a foreign educational equivalent acceptable?	Yes
10.	Is experience in an alternate occupation acceptable?	Yes
10-A.	How long?	60 months
10-C.	Job titles of acceptable alternative occupation	Finance Controller, Manager Finance, Company Secretary, or related

As evidence of the Beneficiary's education and experience credentials the Petitioner submitted copies of the following documentation with the Form I-140 petition:

- A diploma and transcript from the [redacted] India, indicating that the Beneficiary was awarded a bachelor of commerce on June 29, 1995, based on the completion of a three-year degree program in 1993;
- Certificates from [redacted] showing that the Beneficiary passed intermediate examinations in 1995, final examinations in 1997, and was granted Associate Membership in the [redacted] on August 31, 1997;
- Certificates from [redacted] showing that the Beneficiary passed intermediate examinations in 1997, final examinations in 1999, and was granted Associate Membership in the [redacted] on June 20, 2001;
- An "Evaluation of International Educational Credentials" from the American Association of Collegiate Registrars and Admissions Officers (AACRAO), dated January 15, 2015, stating that the Beneficiary's three-year bachelor of commerce degree from the [redacted] in the years 1990-1993 is comparable to three years of university-level study in the United States; that his Certificate of Membership in the [redacted] together with his bachelor of commerce degree is comparable to a bachelor's degree from a U.S. college or university; and that his Certificate of Membership in the [redacted] together with his bachelor of commerce degree is likewise comparable to a bachelor's degree from a U.S. college or university.
- Letters from a series of former employers in India stating that the Beneficiary was employed in the years 1998-2009 as follows: (1) with [redacted] as Manager Accounts (Designate) in the [redacted] in [redacted] from January 1, 1998 to November 16, 1999; (2) with [redacted] in [redacted] as a company secretary from around December 1, 1999 to March 9, 2002; and (3) with [redacted] in [redacted] as finance manager and company secretary from April 2002 to April 9, 2009.

On the labor certification the Petitioner asserted that the Beneficiary was subsequently employed by [redacted] in [redacted] India, as finance controller from June 1, 2009 to September 14, 2009, and with [redacted] in [redacted] India, as VP of Finance from October 31, 2009 to March 18, 2010, before commencing work with the Petitioner on March 22, 2010. There is no confirmation letter from [redacted] however, and only a termination letter from [redacted] which acknowledged the Beneficiary's resignation on September 14, 2009, but did not indicate when he started or what position he held.

On June 17 2015, the Director issued a notice of intent to deny (NOID) in which he advised the Petitioner that the Beneficiary would only be considered for classification under the category of advanced degree professional, and not under the alternative second preference employment-based category as an individual of exceptional ability. The Director stated his reasoning as follows:

> The petitioner has selected Part 2, 1.d in the instant petition for consideration of the beneficiary for the second-preference employment-based classification of member of the professions with an advanced degree. In petitioner's letter, the request was made [for] consideration of the instant petition in two categories of the second-preference classification; however, USCIS [U.S. Citizenship and Immigration Services] will only consider one category with each petition submission. USCIS does not consider more than one category with each employment-based petition. For consideration of the beneficiary in another category of the classification, the petitioner must file a single petition for each category. Although representations have been made that the beneficiary has exceptional ability, consideration of this petition will be limited to the issue of whether the beneficiary is a member of a profession holding an advanced degree.

The Director also indicated that the Beneficiary's educational credentials – in particular, his final examination and membership certificates from the [redacted] – did not establish that he has a foreign equivalent degree to a U.S. baccalaureate degree (when combined with 5 years of post-baccalaureate experience), as required for classification as an advanced degree professional. The Petitioner was given 33 days to submit additional evidence.

The Petitioner responded to the NOID on July 20, 2015, with a brief from counsel and additional documentation. The Petitioner contended that USCIS should consider both alternative categories for the Beneficiary's employment-based second preference classification – that is, as an advanced degree professional and as an individual of exceptional ability. The Petitioner claimed that the Beneficiary qualifies for classification as an advanced degree professional based on the combination of his educational credentials and years of relevant work experience.

On August 3, 2015, the Director denied the petition on the grounds that the evidence of record did not establish that the Beneficiary has the minimum educational credentials to qualify for the classification of advanced degree professional and to meet the requirements of the labor certification. The Director found that the Beneficiary's three-year bachelor of commerce from the [redacted]

was equivalent to three years of study toward a U.S. baccalaureate degree, but not a full U.S. baccalaureate degree which generally requires four years of study, citing *Matter of Shah*, 17 I&N Dec. 244 (Reg'l Comm'r 1977). While acknowledging the evidence of record indicating that the Beneficiary's subsequent passage of the final examination and associate membership in that organization was educationally comparable to a bachelor's degree in the United States, the Director also found that the is not a degree-granting institution of higher education recognized by the Therefore, the Beneficiary's professional credential from the could not be considered a foreign equivalent degree to a U.S. baccalaureate degree, as required for his classification as an advanced degree professional. Nor did the Beneficiary's credential and three-year bachelor's degree meet the minimum requirements of the labor certification, which did not specify that a combination of lesser degrees and certificates which are collectively comparable to a baccalaureate degree were an acceptable alternative to a U.S. baccalaureate or foreign equivalent degree.

The Petitioner filed an appeal and supporting statement on September 3, 2015, followed by a brief on October 6, 2015. The Petitioner asserts that the Beneficiary has a foreign equivalent degree to a U.S. bachelor's degree which, together with his employment experience, qualify him for employment-based second preference classification as an advanced degree professional. The Petitioner also claims that the Director's refusal to adjudicate the petition under the alternative category of employment-based second preference classification – individual of exceptional ability – was erroneous and an abuse of discretion, and that the Director should be required to adjudicate the petition on this ground as well.

II. LAW AND ANALYSIS

A. The Roles of the DOL and USCIS in the Immigrant Visa Process

It is important to discuss the respective roles of the DOL and USCIS in the employment-based immigrant visa process. As noted above, the labor certification in this matter is certified by the DOL. The DOL's role in this process is set forth at section 212(a)(5)(A)(i) of the Act, which provides:

> Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-
>
> (I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and
>
> (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

None of the above inquiries assigned to the DOL, or the regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether the position and the beneficiary are qualified for a specific immigrant classification.

Therefore, it is the DOL's responsibility to determine whether there are qualified U.S. workers available to perform the job offered, and whether the employment of the beneficiary will adversely affect similarly employed U.S. workers. It is the responsibility of USCIS to determine if the beneficiary qualifies for the job offered under the terms of the labor certification, and whether the job offered and the beneficiary are eligible for the requested employment-based immigrant visa classification. *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983). *See also K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 (9th Cir. 1983).

B. Eligibility for the Classification of Advanced Degree Professional

Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification, *inter alia*, to members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1).

The terms "advanced degree" and "profession" are defined in 8 C.F.R. § 204.5(k)(2). The regulatory language reads as follows:

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.
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> *Profession* means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. [The occupations listed in section 101(a)(32) of the Act are "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."]

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

> (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
>
> (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

In addition, the job offer portion of the labor certification must require a professional holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(4)(i).

Therefore, a petition for an advanced degree professional must establish that the beneficiary is a member of the professions holding an advanced degree, and that the offered position requires, at a minimum, a professional holding an advanced degree. Furthermore, an "advanced degree" is either (A) a U.S. academic or professional degree or a foreign equivalent degree above a baccalaureate, or (B) a U.S. baccalaureate or a foreign equivalent degree followed by at least five years of progressive experience in the specialty.

The Petitioner asserts that the Beneficiary meets the requirements for classification as an advanced degree professional under 8 C.F.R. § 204.5(k)(3)(i)(B) because he has a foreign equivalent degree to a U.S. baccalaureate degree and more than five years of qualifying experience. With regard to the educational component of the classification, the Petitioner claims that the Beneficiary's three-year bachelor of commerce from the and his subsequent advanced study, examinations, and associate membership with satisfy the requirement of a "foreign equivalent degree" which is not precisely defined in the regulations. The Petitioner cites the definition of the term "Professionals" at 8 C.F.R. § 204.5(l)(3)(ii)(C), which states, in pertinent part, that a petition for a professional "must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree . . . . [and that e]vidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study." According to the Petitioner, the regulation only defines a U.S. baccalaureate degree as requiring an official college or university record, while leaving a foreign equivalent degree open to other forms of documentary evidence. We do not agree with the Petitioner's interpretation of 8 C.F.R. § 204.5(l)(3)(ii)(C) as intending to draw a distinction between the forms of evidence necessary to show a U.S. baccalaureate degree and a foreign equivalent degree. In our view, no such intention is manifest in the regulation.

The Petitioner cites three unpublished decisions from our office in 2007 and 2010 in which we found that a beneficiary holding a three-year bachelor's degree from an Indian university and associate membership in the has the foreign equivalent of a U.S. bachelor's degree and meets the regulatory definition of "professional" in 8 C.F.R. § 204.5(l)(2)(ii)(C) – *i.e.*, "a qualified alien who holds at least a United States baccalaureate degree or *a foreign equivalent degree* (emphasis added)." We are not bound in the instant proceeding by these decisions from prior years. While the regulation at 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, unpublished decisions like the ones cited by the Petitioner are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. *See* 8 C.F.R. § 103.9(a). Thus, the above referenced decisions from 2007 and 2010 are not precedents, are not binding on our office, and are not persuasive evidence that the instant Beneficiary's final examination and associate membership certificates from the following his three-year bachelor's degree from the constitute a foreign equivalent degree to a U.S. baccalaureate degree.

The three unpublished decisions discussed above referred to credential advice in the Educational Database for Global Education (EDGE), created by AACRAO, as a primary basis for our finding that passage of the final examination and membership amounted to the foreign equivalent of a U.S. baccalaureate degree. We consider EDGE to be a reliable, peer-reviewed source of information about foreign degree equivalencies.[1] As explained by EDGE, the Association Membership is a professional qualification awarded after two years of study beyond the Intermediate Examination and passage of the Final Examination. The award of Association Membership in the represents "a level of education comparable to a bachelor's degree in the United States." Educational comparability to a U.S. bachelor's degree, however, does not make the Final Examination and Association Membership certificates a single source "foreign equivalent degree" to a U.S. baccalaureate because the is not a college or university and is not a degree-granting institution.

The same applies to the evaluation of the Beneficiary's specific educational credentials by AACRAO, which concluded that the Beneficiary had two different combinations of credentials which are "comparable to a bachelor's degree from a regionally-accredited college or university in the United States." AACRAO did not evaluate any individual credential as a single source foreign equivalent degree to a four-year U.S. baccalaureate degree. Rather, the Beneficiary had a series of lesser credentials – including a three-year university degree and certificates of membership in two professional organizations – which were deemed, in combination, to be comparable to U.S. baccalaureate degrees in the respective fields of accounting and "company secretaryship." Neither the membership certificate in the nor the membership certificate in the even taking the foregoing university degree into account, was deemed to be a "foreign equivalent degree" to a U.S. baccalaureate degree, as required in the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B).

The Petitioner asserts that final examination and membership certificates from the are equivalent to degrees conferred by colleges and universities because they can be used to qualify for higher level academic work at Indian universities. The also issues more advanced credentials – Post Qualification Diplomas – which the Petitioner characterizes as actual degrees. We are not persuaded. As previously discussed, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires that the beneficiary have a U.S. baccalaureate or foreign equivalent degree and evidence thereof in the form of an official college or university record to be eligible for professional classification. The is not an academic institution that can confer a degree with an official college or university record. *See Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 *11 (D. Ore. Nov. 30, 2006) (finding

[1] AACRAO is described on its website as "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in more than 40 countries." AACRAO, http://www.aacrao.org/about (accessed on March 31, 2016). "Its mission is to provide professional development, guidelines, and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology, and student services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." AACRAO EDGE, http://edge.aacrao.org/info.php. (accessed on March 31, 2016). Authors for EDGE must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials. If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.*

USCIS was justified in concluding that membership was not a college or university "degree" for purposes of classification as a member of the professions holding an advanced degree). The is a professional organization, not a college or university, and neither its Final Examination Certificate nor its Certificate of Membership is a degree. While these credentials may be "comparable" to a U.S. bachelor's degree, they are not, either individually or together, a "foreign equivalent degree" to a U.S. baccalaureate degree within the meaning of 8 C.F.R. § 204.5(k)(2). Accordingly, they do not qualify the Beneficiary for classification as an advanced degree professional under section 203(b)(2) of the Act.

The Petitioner contends that by virtue of United States membership in UNESCO (the United Nations Educational, Scientific, and Cultural Organization) we should defer to an allegedly binding commitment of member states to recognize educational credentials of other member states. According to the Petitioner, this binding commitment stems from a document entitled "Recommendation on the Recognition of Studies and Qualifications" that was adopted at the General Conference of UNESCO in 1993 and incorporated in the Lisbon Convention of 1997. The Petitioner claims that the United States signed and ratified the Lisbon Convention, which entered into force in the United States on July 1, 2003. The Petitioner is mistaken. Contrary to the Petitioner's claim, the Lisbon Convention is not binding on the United States, and in fact has never been adopted by the United States. While the United States did sign the Lisbon Convention on November 4, 1997, the Convention has never been ratified by the United States and it has not entered into force in the United States. *See* Council of Europe, http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/165/signatures-and-ratifications (accessed May 2, 2016). Moreover, as discussed in its Explanatory Report, the Convention does not bind the signatory states to any particular outcomes in assessing the equivalency of foreign education. Rather, it commits the signatories to certain standards and procedures in evaluating foreign educational credentials, while reserving the ultimate decision-making power in the signatory states. *See* Council of Europe, http://coe.int/en/web/conventions/full-list/conventions/treaty/165 (accessed May 2, 2016). Thus, we are not bound to consult the Lisbon Convention in this immigration proceeding.

For all of the reasons discussed above, we determine that the Petitioner has not established that the Beneficiary has a foreign equivalent degree to a U.S. baccalaureate degree, as required under 8 C.F.R. § 204.5(k)(3)(i)(A) for classification as an advanced degree professional under section 203(b)(2) of the Act.

In addition, we independently note that the evidence of record does not establish that the Beneficiary has at least five years of progressive experience in the specialty, as required to satisfy the experience component of an "advanced degree" that is built upon a baccalaureate degree. See 8 C.F.R. § 204.5(k)(3)(i)(B). The regulation at 8 C.F.R. § 204.5(g)(1) states as follows with regard to the substantive requirements of employment verification letters:

> Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received.

The letters from three Indian companies claiming to have employed the Beneficiary between 1998 and 2009 – including [redacted] (1998-1999), [redacted] (1999-2002) and [redacted] (2002-2009) – provide the Beneficiary's job title but lack any description of the duties performed during the Beneficiary's years of employment. As for the letter from the fourth Indian company, [redacted] it lacks not only a description of the Beneficiary's job duties, but also his job title and dates of employment. Due to the substantive shortcomings of these employment verification letters, we conclude that the evidence of record does not establish that the Beneficiary has five years of qualifying experience to be eligible for classification as an advanced degree professional based on a baccalaureate degree and five years of progressive experience in the specialty, as required in 8 C.F.R. § 204.5(k)(3)(i)(B). For this reason as well, the petition cannot be approved for classification of the Beneficiary as an advanced degree professional.

C. Minimum Requirements of the Labor Certification

To be eligible for approval under the immigrant visa petition, the Beneficiary must have all the education, training, and experience specified on the underlying labor certification as of the petition's priority date, which is the date the labor certification application was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg'l Comm'r 1977). The priority date of the instant petition is June 30, 2014.

The key to determining the job qualifications is found in Part H of the ETA Form 9089, which describes the terms and conditions of the job offered. It is important that the labor certification be read as a whole. In this case, Part H of the labor certification establishes alternate minimum requirements for the proffered position of chief financial officer, which are either:

- A bachelor's degree in business, accounting, or a related field of study, or a foreign educational equivalent, plus five years of experience as a chief financial officer, a finance controller, a manager finance, a company secretary, or in a related occupation (ETA Form 9089, Part H.4, 4-B, 6, 6-A, 9, 10, 10-A, and 10.C); or
- A master's degree in one of the indicated fields of study, or a foreign educational equivalent, plus two years of experience in the occupational field (ETA Form 9089, Part H.8, 8-A, 8-C, and 9).

The Beneficiary does not meet the minimum educational requirement of the labor certification. As previously discussed, the Beneficiary's three-year bachelor of commerce degree from the [redacted] in [redacted] India, and his final examination and associate membership certificates from the [redacted] and the [redacted] are not, either individually or collectively, a foreign educational equivalent to a U.S. bachelor's degree. In addition, the record does not establish that the Beneficiary has five years of qualifying experience because the employment verification letters submitted by the Petitioner are all substantively deficient under 8 C.F.R. § 204.5(g)(1). Thus, the Petitioner has not established that the Beneficiary meets the minimum labor certification requirements of a bachelor's degree or a foreign educational equivalent, plus five years of qualifying experience. Nor does the Beneficiary meet the alternate education and experience requirements of the labor certification because

there is no claim that he has a master's degree or a foreign educational equivalent, and the evidence of record, due to the substantive shortcomings of the employment verification letters, does not establish that he has even two years of qualifying experience.

Thus, the Petitioner has not established that the Beneficiary meets the minimum educational and experience requirements of the labor certification, as specified in Part H of the ETA Form 9089. For this additional reason the petition cannot be approved for classification of the Beneficiary as an advanced degree professional.

D. Eligibility for Classification as an Individual of Exceptional Ability

While the Director did not consider the request for classification of the Beneficiary as an individual of exceptional ability, we find it unnecessary to address this issue. Since the Petitioner has not established that the Beneficiary qualifies for the proffered position under the terms of the labor certification, the Beneficiary would not qualify in any event for classification as an individual of exceptional ability.

III. CONCLUSION

We affirm the Director's findings that the Petitioner's request to classify the Beneficiary as a second preference employment-based advanced degree professional must be denied on the following grounds:

- The Beneficiary is not eligible for classification as an advanced degree professional under section 203(b)(2) of the Act because he does not have a U.S. master's degree or a foreign equivalent degree in business, accounting, or a related field of study; and the record does not establish that he has a U.S. baccalaureate degree or a foreign equivalent degree in one of the above fields, plus five years of qualifying experience as a finance controller, manager finance, company secretary, or in a related occupation.
- The Beneficiary does does not qualify for the proffered position under the terms of the labor certification because the record does not establish that he has a U.S. baccalaureate degree or a foreign equivalent degree in business, accounting, or a related field of study, plus five years of qualifying experience as a finance controller, manager finance, company secretary, or in a related occupation.

For the above stated reasons, considered both in sum and as separate grounds for denial, the petition may not be approved for classification of the Beneficiary as an advanced degree professional.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of A-D-S-, LLC*, ID# 16697 (AAO June 2, 2016)